IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.2345 OF 1984.

1.Sundardas Ishwardas

2. Smt. Lilavati Ishwardas

3. Indira Ishwardas

4. Lalita Ishwardas

All residing in Room No. 46,
4th floor, Anantwadi,
213-23, Princess Street,
Bombay-400 002. ..Petitioners
(Orig.Defendants/
Tenants)

V/s

1. G. Manmohan Rao since deceased
thorugh his L/Rs.

1a) G. Pushpavathi,

1b) G. Shrinivas

1c) G. Ravinder

1d) G. Sailesh

1e) G. Karthik.

2. Smt. Annapurnamma Coomanadali,
since deceased by her heirs.

2a) G. Pushpavathi,

2b) G. Shrinivas

2c) G. Ravinder

2d) G. Sailesh

2e) G. Karthik.

All residing at 419/9 Joshi Wadi,
Kalbadevi, Mumbai- 400 002. and

at present residing at 3.2.246
Somasudaram Street, Secuderabad 503,
Andhra Pradesh. ..Respondents.

Mr. Abhinandan B. Vagyani for the petitioners.

Mr. N.V. Mhatre for respondent NO.1 and 2a to 2c

CORAM : ANOOP V.MOHTA, J
DATE : 27TH JUNE, 2005.

ORAL JUDGMENT

. The petitioners are the tenants and the respondents are the landlords. The long standing relationship of landlords and tenants between the parties concluded and determined by the Judgment dated 27th April, 1971, in Suit No.2244 of 1965 and same has been confirmed by the appellate Court in appeal No. 286 of 1971, by the judgment dated 10/4/1984. In the result the respondent’s suit is decreed on the grounds; bonafide need, change of user and acquisition of suitable accommodation by the petitioners. Therefore, the present writ petition.

2. The learned trial Judge held that the suit premises are being used for the purpose other than for which it was let out. The suit premises is reasonably and bonafide required for the occupation by the

landlords. The greater hardship will be caused to the respondents/landlords if suit not decreed. Therefore, based on the evidence led by the parties i.e. Mr. Goomedali Manmohan Rao, Achut Raman Kamath (the rent collector of the plaintiff) and Umarshi Ladhabhai and the tenant, Sundardash Ishwardas himself, the Court below has granted the decree of possession in question.

3. The appellate Court also after considering the reasoning, as well as the material placed on the record has confirmed the findings given by the Courts below and refused to interfere with the finding given on the said grounds.

4. Heard the learned Counsel appearing for the parties and noted their rival contentions. With the assistance of both the Counsel I have gone through the record, as well as, the evidence led by the parties. The settled principles and the power under Article 227 of the Constitution of India as laid down by the Apex Court and as relied by the learned Counsel appearing for the landlords **AIR 1987S.C. 117 (Chandavarkar Sita Ratna Rao V. Ashalata S. Guram)**, are as follows;

> "If there is evidence on record on which a finding can be arrived at and if the Court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities."
>
> "The High Court was not competent to correct errors of facts by examining the evidence and reappreciating."
>
> "But under Article 227 of the Constitution the power of interference is limited to seeing that the tribunal functions within the limits of its authority."
>
> "The High Court also should not interfere with a findings within the jurisdiction of the inferior tribunal except where the findings were perverse and not based on any material evidence or it resulted in manifest of injustice".
>
> "In the premises first the High Court exceeded its jurisdiction in interfering with the finding of facts made by the appellate bench of the Court of Small Causes for the reasons mentioned hereinbefore."

. I find there is no case made out to interfere with the concurrent findings given by the Court below. There is no perversity or illegality as such pointed out or even born out from the record to interfere with the findings which are based upon the appreciation of the evidence. Even after considering the possible view on some of the grounds as raised. The view as taken by the Courts below it is not perverse or contrary to the record.

5. In this background and also for the following reasons, I am confirming the order of eviction as granted. The additional reasons for maintaining the orders are as under

6. There is nothing on the record to suggest or pointed out by the Counsel appearing for the petitioner that the the premises in question was let out only for the non-residential purpose. There is a material on the record to show that the premises let out for residence purpose but has been used by the petitioner for the non-residential purpose. The respondent/landlrod through the evidence on the record as supported by the findings given by the Court below, justifying and pressed for a grant of eviction, as the petitioner changed the use of the premises without their permission and or consent. Once the parties through their evidence proved their case of change of use by the tenant, without landlord’s permission or consent and there is a material on the record to support the same, I see there is no reason to discard the said ground, for the eviction. Both the Courts in the present case held that the suit premises, is being used for the non residential

purpose, there is no reason to disturb the said finding, as nothing contrary born out from the record. The view taken by the Courts is reasonable and possible, need no interference.

7. The requirement of landlord of his own premises if made out and born out from the record and has been concurrently accepted by the Courts below, based upon the evidence led by the parties, there is no reason to upset the said finding. The learned Advocate appearing for the petitioner tenant basically relied upon **(1988) 3 S.C.C. 131 (Ram Dass V. Ishwar Chander and Others)** in support of his contention that the bonafide need of the land lord should be genuine and honest, conceived in good faith; and the court must also consider it reasonable to gratify that need. The Court must take into consideration of the all the relevant circumstance so that the protection afforded by law to the tenant is not rendered merely illusory or wihttled down. The cautious approach is necessary. There is no quarrel with this proposition of law. The evidence as recorded and findings given by the Courts below have considered all this aspect including the reasonable and bonafide need of the landlord, as they need premises in question

for their personal occupation.

8. For want of material evidence on the record to justify the contention as raised by the Counsel for the petitioner, that during the pendency of the suit some premises were vacant, which were let out by the landlords is unaccepted. Such pleas if not proved, it cannot be said that the need of the landlord was not bonafide. Except the words and counter words, there is no material to justify the said contentions on the record. Even assuming that there is a some justification in the contention as raised but in the present facts and circumstances of the case and when both the courts after considering material and evidence on the record, rejected even the said contention and as nothing contrary has been pointed out in the present writ petition, I am also of the view, that the view taken by the Courts below is correct.

9. The comparative hardship is also a basic element while confirming or granting the decree for eviction, when it comes to the reasonable and bonafide need of the landlord and or the acquisition of the suitable accommodation by the tenant. In my view once the

landlord proved by the material and substantial evidence on the record that the need is bonafide and reasonable and in the present facts and circumstances of the case, it is born out from the record that the issue of comparative hardship or greater hardship is definitely tilt in favour of the landlord. There is nothing on the record to suggest and or to show that the landlord had any premises available for immediate occupation as per his requirement and need.

10. Now the last point which remained is of a suitable residential premises, which is acquired by the petitioner. It is true that the word "suitable residence" is not defined in Bombay Rent Act, but even if we consider the whole purpose and object of the Act, the premises which is in the occupation of the tenant, based upon which the landlord has raised the issue about the acquisition of suitable premises by the tenant, unless proved otherwise, itself sufficient to shows that the petitioner tenant has been occupying the suitable new premises. The usual submission that some of the members of the petitioners-tenants are using and occupying the suit premises, in no way, affect the proved case of the landlord on all counts. I have noted

the evidence in the present matter of Shri Umarshi Ladhabhai on behalf of the landlord-respondent, wherein he has deposed, that nobody is occupying the said premises and the said premises in question is locked. Whatever may be the circumstance, the tenant-petitioner have acquired the new premises and they are in actual occupation of the same. In this background, it cannot be said that the premises in actual occupation is not suitable for want of supportive evidence by the tenant and or even bourn out from the record of the case.

11. Considering all these aspects, I am of the view that no case is made out to interfere with the concurrent findings given by the Courts below. In the result, the petition is dismissed. Rule discharged. Interim stay granted is also vacated. However, 4 months time is granted to vacate the premises on filing a usual undertaking by petitioners and also all the members of the petitioner’s family,if any, occupying the premises in question within 4 weeks, failing which the landlord-respondent is free to execute the decree in accordance with the law. No order as to cost.

[ANOOP V. MOHTA, J.]